

APPEAL NO. 031723
FILED AUGUST 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 3, 2003. The hearing officer decided that the respondent (claimant herein) sustained a compensable injury on _____; that the claimant timely reported his injury to his employer so that the carrier is not relieved of liability based upon a failure to timely report an injury; and that the claimant had disability from May 10, 2002, continuing through the date of the CCH. The appellant (carrier herein) files a request for review, arguing that the hearing officer's factual findings regarding injury, timely report of injury, and disability are contrary to the evidence. The carrier also complains that the hearing officer refused to hear testimony regarding the claimant's being paid vacation pay, sick pay, short-term disability, and long-term disability. The claimant responds that the hearing officer's decision was supported by the evidence and should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

There was conflicting evidence on the issues of whether or not the claimant sustained a compensable, timely reported this injury to his employer, and had disability.

Applying the above standard of review, we cannot say the hearing officer committed legal error in resolving the issues before her.

As far as the carrier's evidentiary point is concerned, it appears to argue that payment of vacation pay, sick pay, short-term disability, and long-term disability benefits by the employer is a defense to disability. As the hearing officer recognized at the hearing, it is not. The evidence the carrier argues it was not permitted to develop was not relevant to the issues before the hearing officer and thus we find no error in her evidentiary rulings concerning this evidence. There was no issue regarding the amount of temporary income benefits (TIBs) due, and thus evidence concerning vacation and sick pay and short and long term disability payments, as those benefits may or may not be included in post-injury earnings under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.2 (Rule 129.2) and affect the TIBs calculation under Rule 129.3, was not before the hearing officer.

The true corporate name of the insurance carrier is **EAGLE PACIFIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge